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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 4967 of 1982

Date of decision: 6.9.2007

Spinder Singh alias Harminder Singh ...Petitioner

Versus

The State of Punjab and others ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Sukhminder Singh, Advocate for the petitioner.

Mr. Arvind Mittal, Additional Advocate General, Punjab.

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RAJESH BINDAL, J.

The petitioner has approached this Court challenging the order dated December 26, 1978 (Annexure P-3) passed by the Commissioner, Patiala Division, Patiala and order dated September 01, 1982 (Annexure P-5) passed by the Financial Commissioner (Appeals), Punjab in proceedings under Punjab Land Reforms Act, 1972 (for short "the Act").

Briefly the facts, as pleaded in the petition, are that the petitioner on the appointed date i.e. January 24, 1971 had 28.87.12 ordinary hectares of Barani agricultural land. As per the provisions of Act, he was entitled to retain one unit of 7 hectare of Ist quality land, which is equivalent to 20-5 ordinary hectares of Barani land. Before the Collector (Agrarian), he submitted that two pieces of land measuring 52 Bighas 7 Biswas were sold by him to Paramjit Singh, Harbans Singh, Isher Singh and Harjit Singh on January 10, 1974 with a view to construct his house and enable him to make improvement on the land. The transactions being bonafide even though made after the commencement of the Act on April 2, 1973, the land involved therein deserved to be excluded for the purpose of declaration of surplus area. The Collector (Agrarian) while excluding the sales made by the petitioner, on April 10, 1975 held that thereafter the

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petitioner was left with only 20-24-42 ordinary hectares of land, which was less than 7 hectare of Ist quality of land. Accordingly, there was no surplus area.

Aggrieved against the order of the Collector, Agrarian, the State filed an appeal before the Commissioner, Patiala Division, Patiala, which was dismissed in default on October 25, 1978 and no application for restoration thereof was filed.

However, on a reference by the Collector (Agrarian), Commissioner vide order dated December 26, 1978 permitted him to review the order passed by his predecessor on April 10, 1975. This order of Commissioner was impugned before the Financial Commissioner, who also rejected the revision vide order dated September 1, 1982. In reply to the petition, the orders challenged in the petition have been justified reiterating the reasoning on which the Financial Commissioner rejected the revision filed by the petitioner.

I have heard Shri Sukhminder Singh, learned counsel appearing for the petitioner and Shri Arvind Mittal, learned Additional Advocate General, Punjab appearing for the respondents and with their assistance have though the record of the case.

Learned counsel for the petitioner submitted in this case that respondents had preferred an appeal against the order passed by the Collector (Agrarian) and infact on the date when the proceedings were initiated on a reference made by the Collector (Agrarian) seeking permission for review of the order passed by his predecessor in office, even appeal was still pending before the same Commissioner. He submits that in such a situation, exercise of powers by the Commissioner and subsequently upholding of the order by the Financial Commissioner is totally without jurisdiction.

On the other hand, learned counsel appearing for the respondents submitted that impugned orders passed by the authorities are perfectly in conformity with law. The authorities have not gone beyond their jurisdiction in directing review of the order passed by the Collector,

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Agrarian, which infact was totally contrary to the provisions of law. He further submitted that as there was no merger of the order passed by the Collector (Agrarian), in the order passed by the Commissioner in appeal, appeal preferred by the State having been dismissed in default, nothing prevented the Collector to initiate proceedings for review of the order as it will remain an order passed by the Collector.

Before the issue is examined in detail a reference to the relevant provisions of the Acts, namely, Section 18 of the Act and Section 82 of the Punjab Tenancy Act, 1887(for short "the 1887 Act") would be relevant, which are extracted below:-

Section 18 of the Punjab Land Reforms Act, 1972:-

"Appeal, review and Revisions :- The provisions in regard to appeal, review and revision under this Act shall, so far as may be, the same as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887 (Act XVI of 1887)."

Section 82 of the of the Punjab Tenancy Act, 1887:-

"Review by Revenue Officer :- (1) A Revenue Officer as such may either on his own motion or the application of any party interested, review and on so reviewing modify reverse or confirm any order passed by himself or by any of his predecessors in office;

Provided as follows:-

(a) When Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officers of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;

(b) no application for review of an order shall be entertained unless it is made within ninety days from

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the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period.

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer and to whom there is no successor in office.

(3) An appeal shall not lie from the order refusing to review, or confirming on review, a previous order."

Section 82 of the 1887 Act enables the Revenue Officer to review his order or an order passed by his predecessor in office. However, in case an order passed by predecessor in his office is to be reviewed, sanction of an authority higher in rank was required. This exercise of power is subject to condition an order against which appeal had been preferred can not be reviewed.

Now considering the facts of the case in terms of the provisions of the Act and the true spirit thereof it is found that the Collector (Agrarian) had passed the order on April 10, 1975 declaring that there is no surplus area with the petitioner. Aggrieved against the order, respondent-State preferred an appeal before the Commissioner, Patiala Division, Patiala.

During the pendency of appeal, before it was dismissed in default on October 25, 1978, the Collector, Agrarian sent a reference to the Commissioner, who issued notice to the petitioner for review of the order passed by the Collector (Agrarian) on April 10, 1975. This fact is found on

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perusal of para 3 of the order dated December 26, 1978 passed by the Commissioner, which is in the following terms:-

> "3. This reference came up for hearing before me on 1.9.1978, on which day, the State was represented by the Naib Tehsildar, Agrarian, and the respondent landowner was present in person."

As reference was required to be made to the Commissioner seeking a permission to review the earlier order passed by the Collector, Agrarian in terms of Section 82 proviso (a) of the 1887 Act, which is applicable for proceedings under the Act in terms of Section 18 of the Act whereby the provisions of the Punjab Tenancy Act, 1887, as contained in Sections 80 to 84, have been made applicable. After hearing the petitioner as well as Niab Tehsildar, Agrarian, learned Commissioner, granted permission to the Collector, Agrarian to review its order dated April 10, 1975 and directed him to decide the case afresh in accordance with law after hearing the parties and allowing them an opportunity to produce their evidence. Petitioner approached the Financial Commissioner against the order passed by the Commissioner permitting the Collector, Agrarian to review its order. The Financial Commissioner, rejected the revision petition filed by the petitioner on the ground that appeal filed by the State against the order of Collector (Agrarian) having been dismissed by the Commissioner in default, the order thereof did not merge in the order of Collector and accordingly, permission for review of the order granted by the Commissioner was perfectly legal.

The reasoning given by Financial Commissioner to reject the revision filed by the petitioner against the order passed by the Commissioner permitting the Collector (Agrarian) to review its order cannot be accepted. On a plain reading of proviso (d) of Section 82(1) of the 1887 Act, which provides that an exception to the exercise of power of revenue by the Revenue Officer, it is evident that an order against which an appeal is 'preferred' shall not be reviewed. As noticed above, on the date when reference was made by the Collector (Agrarian) to the Commissioner

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seeking permission for review of the order, the State had already preferred an appeal against the order sought to be reviewed. In the circumstances, the bar created under proviso (d) to Section 82 of the 1887 Act was clearly applicable. The view expressed by the Financial Commissioner that it was only when some order is passed by the Commissioner in Appeal on merits and consequently the order of Collector merges in the order of Commissioner, the bar created under proviso (d) of Section 82 of the 1887 Act applies, is a result of complete misreading of the provision. Bar created in the Section for review of the order is applicable the moment an appeal is preferred. It is not the condition that the appeal should have been decided also. Incidentally in the present case the appeal was also filed by the State and review was also sought by it. It is settled law that if plain language of the statute is clear, there is no reason to add words into it or giving interpretation which is not born out from its plain language and meaning. The theory of merger of order given by the Financial Commissioner while passing the impugned order is clearly beyond the provisions of the Act and resulted in dilution of the exception clause which is totally beyond the jurisdiction vested in the Financial Commissioner.

For the reasons stated above, I find merit in the present petition and the same is allowed. Accordingly, impugned order dated December 26, 1978 (Annexure P-3) passed by the Commissioner, Patiala Division, Patiala and order dated September 01, 1982 (Annexure P-5) passed by the Financial Commissioner (Appeals), Punjab are declared illegal and without jurisdiction and are set aside with no order as to costs.

September 06, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)